IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

Crl.Rev.Pet.No. 176 of 1999()

CRA.227/1997 of ADDL.SESSIONS COURT-II, KOZHIKODE
CC.666/1994 of JUDL.MAGISTRATE OF FIRST CLASS-I, THAMARASSERY

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REVN. PETITIONER/APPELLANT/ACCUSED:

MOIDEEN KOYA,S/O.MAMMED KOYA,
VADAKKANCHERIPARAMBIL, CHERUVANNUR AMSOM AND DESOM,
KOLATHARA (P.O.), KOZHIKODE DISTRICT.

BY ADV. SRI.P.N.RAVINDRAN

RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERALA, REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, COCHIN-682 031

BY PUBLIC PROSECUTOR SRI.NOBLE MATHEW

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 24/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B.KOSHY, J.

Criminal R.P.No.176 OF 1999 ()

Dated this the 24th day of September, 2007

O R D E R

Petitioner was employed as a driver in the Kerala State Road Transport Corporation. On 16.8.1994, at about 10.30 a.m. while he was driving the bus bearing registration No.KL - 15/256 along the Calicut - Wynad road, it hit PW2, who was crossing the road on her way to the G.M.U.P.School at Parappanpoyil Bazar. It resulted in amputation of her left leg below the knee. He was charge sheeted for the offence punishable under Sections 279 and 338 of the Indian Penal Code.

2. PW1, the brother of the injured was examined. He was not an eye witness. PW2, the motor accident victim is a 10 year old girl. Her left leg was run over by the wheel of the bus. The injured girl was beneath the bus after she was hit by the bus and her left leg was run over and consequently her left leg was amputated. Ext.P8 is the wound certificate. The fact that

accident occurred while petitioner was driving the K.S.R.T.C. bus is not disputed. Therefore I am not going into the log book produced etc. The defence case was that the girl student abruptly crossed the road and she was negligent and petitioner was not negligent. Ext.P2 is the scene mahazar. It shows that road has got a total width of 7 metres and it has a road margin on the west measuring 1.45 metres. The road is situated in north - south direction. The bus was proceeding from south to north. The road at that place is having a clear vision to a distance of 40 metres towards north and 125 metres towards south, from the place of occurrence. The accident spot was fixed by noting blood stains and crush flesh and other objects found at the scene of occurrence. The place of occurrence is 1.30 metres to the east of the western edge of the tar road. That shows that PW2 who was coming from Andona road to U.P.school situated on the west side of the main road when the accident occurred and she has almost reached the destination when the accident occurred. Ext.P2 also shows that there were blood stains on the left front tyre and flesh was also seen crushed and smeared and got fastened on that tyre. Bus was stationed on the western side of the tar road and the left front tyre was at the western edge of the tar road and left rear tyre

was one metre to the east of the western edge of the tar road. The K.S.R.T.C. bus has a width of only 2.40 metres. The evidence would show that it is necessary for all students and public who are coming from Andona road have to cross the road to reach the School. There was a sign board placed near the School which shows the presence of School nearby and therefore vehicles should go slow. PW3 is a sole eye witness who saw the accident. He clearly stated that there was a signal board displaying the School situated therein. PW3 is a person who is conducting business in the nearby shop and he is familiar to that place and he is only a natural witness. He also stated that accident occurred only when she abruptly crossed the road and he also deposed that the bus was driven at a rash and high speed and if it was in a slow, accident could have been avoided and no attempt was made by the driver to swerve the vehicle on any side of the road to avoid the accident. Even though it is a fast passenger bus, he has to drive the vehicle carefully in the School zone. But according to the petitioner, there was a curve and at that curve the incident occurred. But as per Ext.P2 there is no curve and driver is expected to be more conscious as School students and other people who used to reach the main road from Andona road

have to cross the road to reach the School on the western side. Evidence of PWs.3, 4 and 5 also shows that after the hit, girl fell down and she was pulled towards the centre due to the centripetal force and the front left tyre ran over the left leg of the girl and so the girl happened to be beneath the bus and it was from there, people have taken the girl out and taken her to the hospital. PW3's evidence is followed by PWs.4 and 5. No independent evidence was adduced or no independent witness was examined by the defence side and trial court as well as appellate court concurrently found that appellant is guilty for the offence punishable under Sections 279 and 338 of the Indian Penal Code. I see no ground to interfere in the conviction based on the finding of facts by the two courts. However, even though the trial court sentenced the petitioner to undergo simple imprisonment for six months and to pay a fine of Rs.1,000/- under Section 279 and directed to undergo simple imprisonment for one year and to pay a fine of Rs.1,000/- under Section 338, appellate court reduced to six months simple imprisonment and three months for offences punishable under Sections 338 and 279 IPC respectively. Apex Court in various decisions held that no leniency need be shown on drivers who are negligently driving the vehicle. Merely

because there was delay and revision application filed in 1999 came up for hearing only in 2007 is not a ground for reducing the punishment. In this case, the minor girl's left leg was amputated due to the negligent driving. No grounds are made out to interfere in the concerned finding lead to conviction for offence punishable under Sections 338 and 279. However, granted six months rigorous imprisonment imposed under Section 338 of IPC by the appellate court is reduced to three months imprisonment with a fine of Rs.1,000/- and in default of payment, simple imprisonment for one month and no interference is required for the sentence issued for the offence punishable under Section 279 of IPC and sentence can be run concurrently. With the above observations this revision petition is disposed of.

J.B.KOSHY, JUDGE

prp

J.B.KOSHY

Criminal.R.P.176 OF 1999

O R D E R

24th September, 2007